

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA, DAMAN AND DIU

### EXTRAORDINARY

#### GOVERNMENT OF GOA, DAMAN AND DIU

##### Local Administration & Welfare Department

##### Office of the Registrar of Cooperative Societies

##### BEFORE THE REGISTRAR OF COOP. SOCIETIES GOVERNMENT OF GOA, DAMAN AND DIU, PANAJI

No. RCS/AR(HQ)/GSCB/145-B/80-81

Sub: Matter under Section 78 of the Maharashtra Cooperative Societies Act 1960, as extended to the Union Territory of Goa, Daman and Diu and amended from time to time.

Read: 1) Show Cause Notice No. RCS/AR(HQ)/GSCB/146-B/80-81 dated 29-11-80 issued under sub-section (1) of section 78 of the Maharashtra Cooperative Societies Act 1960 read with Rule 61 of the Cooperative Societies Rules 1962 to the elected Directors of the Board of the Goa State Cooperative Bank Ltd., Panaji.

2) Objections dated 15-12-80 received from Sarvasri Surendra P. Sirsat, Vivek Prabhu Dessai, Mohandas G. Amonkar, Vishnu S. Cuncolienkar, Harischandra Desai, Sadashiv V. Marathe, Shantaram S. Bhobe and Motilal S. Bandekar, all elected Directors of the said Bank.

##### 1) Present:

i) Shri Agnelo F. Diniz, Advocate, for parties cited at Sr. No. 2 above.

2) This is a matter covered by Section 78 of the Maharashtra Cooperative Societies Act, 1960, as extended to the Union Territory of Goa, Daman and Diu, hereinafter referred to as the "Act".

3) The Goa State Cooperative Bank Ltd., Panaji, hereinafter referred to as the "Bank" is a registered Society under the "Act" and has been registered on 7-11-63 by assigning the registration No. BNK/(a)-1/Goa. The day to day affairs of the Bank are run by the Committee, referred to as the "Board of Directors" in the Bye-law No. 36, consisting of 12 Directors, out of which, 9 are elected and 3 are nominated by the Government of Goa, Daman and Diu.

4) Elections to the Committee were held in accordance with provisions of the Goa, Daman and Diu Specified Cooperative Societies Election to Committees Rules, 1978, and the charge of the affairs of the Bank was taken over by the present Board of Directors on 12-1-79.

5) The objects of the Bank are contained in Bye-law No. 2 of registered Bye-laws which, inter-alia, envisage that

the Bank shall finance the cooperative societies which are admitted as its members and affiliated to the said Bank.

6) It has been observed for quite some time that the functioning of the Bank was not being carried on proper lines and in accordance with the provisions of the Act, the Cooperative Societies Rules 1962, made thereunder, hereinafter referred to as the "Rules" and the Bye-laws of the said Bank. Several defaults and instances of negligence in the performance of its duties have come to the notice of the Registrar as mentioned in the notice dated 29-11-1980, cited at Sr. No. 1 above, issued under sub-section (1) of section 78 of the Act, read with sub-rule (2) of Rule 61. Notices were accordingly addressed to the elected Directors with a view to give them an opportunity to put in their say, within a period of 15 days from the date of issue of said notice as to why action as envisaged under Section 78 of the Act should not be taken and why an Administrator should not be appointed in place of the Board of Directors. Copies of the said notice were also sent to the two Government nominees. Accordingly, the Directors, whose names have been mentioned at Sr. No. 2 above, have shown cause on 15-12-1980. On their request, they were further heard through their Advocate, Shri Agnelo Diniz, on the 26th December, 1980.

7) In their said objections dated 15-12-1980 to the said show cause notice, Shri Surendra Sirsat, Chairman and 7 Directors have raised a number of points, which were again urged during the course of the hearing on 26-12-1980, which are discussed point-wise hereinafter. For the sake of brevity, the objections are not repeated but only reference to the relevant para in the objection has been given.

8) It has been contended in Para 3(1) of the objections that notices have been given only to 9 out of 12 Directors. No notice has been given to the Secretary/Manager. In this regard, it is stated that copies of the notice have also been duly sent to two of the Government nominees, which is a sufficient and proper notice to them under the provisions of the Act and the Rules and it was open to them to give their say, if any. Having not done so, it is assumed that they agreed with the contents of the notice. Anyway, such an objection could have been raised only by these Directors and Shri Sirsat and others have no locus stand to raise this objection and no prejudice has been caused to them. Similarly, the question of sending the notice to the third Government nominee, namely, the Registrar does not arise on the facts and circumstances of the case and no prejudice is caused to the elected directors thereby. No notice has been envisaged under the Act and the Rules in so far as the Secretary/Manager is concerned.

9) The second objection is that conditions precedent for issue of a notice under sub-section (1) of Section 78 have not been satisfied. This contention is vague and unfounded because Shri Sirsat and others themselves have not been able to categorically indicate any of the conditions which are required to be satisfied. The notice, as such, is therefore, perfectly correct and within the scope of section 78(1) of the Act. The grounds mentioned in the notice are sufficient and adequate for the issue of the notice.

10) The next objection is that the notice under sub-section (1) of Section 78 does not authorise for issue of a notice as regards the banking business of the Cooperative Society in-as-much as banking and its regulation is in the central sphere. This contention does not hold good in view of the fact that the said Bank is a registered cooperative society under the "Act" and is therefore, governed by the provisions of the said Act and hence notwithstanding the fact that it is doing banking business, the society is bound and governed by the provisions of the "Act". There is no distinction between the banking business and other business of a society registered under the "Act". Having got the Bank registered under the Act, they are estopped from raising this objection.

11) The next objection is regarding the non-issue of the notice to the Federal Society and for not obtaining sanction of the Reserve Bank of India. In regard to it, it may be mentioned that the term "federal society" as referred to in sub-section (i) of section 78 of the Act means a Federal Society of this Union Territory as defined in clause (13) of section 2 of the "Act". No Federal Society as such has been established in this Union Territory. So in the absence of any such Federal Society for this Union Territory, the question of any such consultation does not arise at all. Further, neither the Act nor any other law envisages obtaining of any sanction from the Reserve Bank of India.

12) With regard to what has been stated in para 3(v) of their objections, it may be mentioned that sections 79, 79A and 87 are independent provisions and have been incorporated to meet different contingencies and situations and have no bearing whatsoever on the provisions of Section 78 of the Act. Hence, the question of taking recourse to the provisions of sections 79, 79A and 87, prior to invoking the powers under section 78, did not arise and hence the contention that action under Section 78 in the instant case is mala-fide is unfounded and does not hold water.

13) The contention made in para 3 (vi) of their objections has no substance as would be quite evident from a perusal of the facts and the material. There is abundant material with proper nexus for the exercise of the statutory powers. No extraneous circumstances, as alleged has been stated in the reply. The opinion is formed strictly on the basis of the material and as such, it is not vitiated.

14) It is further contended that the impugned transactions have been carried out with the approval of the Registrar as Government Nominee and therefore, the Registrar is estopped in law from challenging the same. In this regard it may be mentioned that mere participation by the Registrar in the capacity of a Government Nominee on the Board in its meetings does not amount to approval or concurrence in his capacity as Registrar. Moreover, the Registrar is on the Board of Directors as a Government Nominee and functioned as one of the Directors of the Bank and his decisions/opinions in such capacity were subject to being over-ruled by a decision of the majority of the Board. Therefore, the said contention that the Registrar is estopped in law from challenging the actions of the Board is incorrect and does not hold good in law. The legal position is well-settled that there cannot be any estoppel against law. The Registrar is empowered by the Act and the Rules to take appropriate action. There cannot be any estoppel against him in the exercise of his statutory functions under the Act and the Rules.

15) In regard to the objections in para 5 that they do not accept as correct in their entirety the allegations made in para 2 of the notice, I see no substance in this objection in the absence of any ground in support thereof and do not therefore agree with the same.

16) Now I shall hereinafter deal with the points stated in the notice and the replies thereto furnished by the objections.

17) As per Bye-law No. 40 (15) of the Bye-laws of the Bank, the Board of Directors of the Bank is required to frame regulations for the conduct of the business of the Bank, consistent with the Act, Rules and Bye-laws. However, it is observed that no Rules and Regulations indicating the procedure for sanction of loans have been framed by the Board for the main business of the Bank of advancing loans to cooperative societies. On this point, it has been contended that no such rules are necessary as loans are sanctioned as per guidelines issued by the Reserve Bank of India, from time to time. This contention is not correct because when separate Rules have been framed by the Bank and got the same approved from

the Registrar for urban loaning, long term loaning and overdrafts etc., there is no cogent reason as to why no rules are framed for other types of loans when there is a statutory requirement for the same. If there was no necessity of framing rules, then why they have been framed, as pointed out above. The Bye-laws specifically provide for the framing of such Rules and failure to do so is a clear intentional violation of the Bye-laws resulting in negligence in the performance of the duty imposed on the Bank by the said Bye-law.

18) As mentioned in para 3(ii) of the notice dated 29-11-80, it is seen that as per the Bye-laws of the Bank, the powers to sanction loans vest with the Board of Directors of the Bank, as also the Executive Committee, subject to the general directions issued by the Board of Directors in this behalf from time to time. However, it is seen that no specific directions have been issued by the Board of Directors to the Executive Committee specifying the limits and the types of loans to be sanctioned by the latter. The contention that the Bye-laws empower the Executive Committee to sanction loans and advances and it is not obligatory for the Board to give directions in the matter is not tenable because it is mandatory for the Board of Directors to issue such directions to the Executive Committee which derives its powers from the Board. Such omission is clearly a case of negligence in the performance of the duty imposed on the Board by the Bye-laws.

19) In para 3(iii) of the notice dated 29-11-1980, it has been brought to the notice of the Board of Directors that Bye-law No. 40(30) of the Bye-laws of the Bank provides that the Board may delegate any of its powers to a Sub-Committee, Special Committee or the Managing Director or General Manager or Manager as it deems fit. In other words, the powers of the Board cannot be delegated to any body, authority or functionary of the Bank below the rank of Manager. However, it is observed that powers had been delegated to the level of Branch Agents empowering them to sanction loans and advances. In spite of the observations made by the Auditors during the course of the statutory audit to the effect that such delegation is not proper and is contrary to Bye-law No. 40(30), no steps have been taken by the Board to remedy the situation. Even the Reserve Bank of India, in their summary record of discussions with the Board of Directors of the Bank, as forwarded under its letter No. ACD. Bom./Insp/D. 2(viii)-80/81 dated 30-7-1980, has also observed on this issue as follows:—

"The Board of Directors had delegated powers for sanction of loans to various officers upto certain limits or without limits particularly to agents of branches in respect of crop-loans. There is no need for such delegation of powers for sanctioning crop-loans to the agents. All crop-loans should be granted by the Executive Committee/Board of Directors every year and drawals may be allowed by Agents of Branches within the limits so fixed".

The contention that the Branch Agents are Managers is not supported by any provision in the Bye-laws. Bye-law 45 does not provide for the appointment of Branch Agent as Manager and as such the posts of Branch Agent and the Manager are quite distinct and separate. There is no designation in the entire Bye-laws like General Manager. Only one Manager at the Head Office has been appointed who is responsible for the general administration of the Bank subject to the control of Chairman and the Board of Management. Therefore, any delegation below the level of Manager is against the Bye-law No. 40(30).

20) In para 3 (iv) of the notice, it is pointed out that the Bank has been advancing Medium-Term loans to the Goa, Daman and Diu Cooperative Fisheries Federation Ltd., for financing mechanised fishing trawlers. However, it is observed that no regulations have been framed by the Bank in terms of Bye-law No. 40(15) for the financing of such mechanised trawlers and other fishery requisites. This point has been simply denied in the objections without producing or contending any fact or ground or producing a copy of the regulations, if any, framed by the Board in support of their denial. I, therefore, hold that the Board has violated the said Bye-law.

21) As pointed out in para 3(iv)(a) of the notice, the Bank has been according only provisional sanctions as regards the fisheries loans. However, loans have been released without any final sanction either from the Board of Directors or the Executive Committee. First of all, there is no provision either in the Act or in the Rules or in the Bye-laws for according provisional sanction and, in any event, no amount can be

allowed to be withdrawn unless final sanction is accorded by the competent authority as prescribed in the Bye-laws. By according provisional sanction and by releasing loans on the said basis, the Board of Directors have committed a grave financial irregularity which has resulted in weakening the financial base of the Bank. In their objections to the notice, the stand taken is that the procedure followed by the Bank is for having effective control by the Bank over the disbursement of loans to individuals of the Fisheries Federation. This contention is obviously erroneous because after detailed scrutiny by the Bank's officials, the matter alongwith the report should have come back to the Executive Committee or the Board of Directors for issue of sanction before any amount could be released which could have given effective control to the Bank.

22) As mentioned in para 3(iv)(b) of the notice, it is observed that in the matter of disbursement of the loans also, at the level of the Federation, it has not been ensured by the Bank that the conditions imposed by it, namely, collection of margin money from the loanees to the extent of 15% of the total cost of the project/rowler, is complied with by the Federation. In their reply, it has been contended that they had asked the Fisheries Federation to comply with all the conditions as laid down by the Bank. It is pertinent to note that the Director nominated by the Bank on the Board of Directors of the Fisheries Federation failed to safeguard the interests of the said Bank. It was fully within the knowledge of the Bank that the margin money at the rate of 15% was not being collected in advance as required. Still the Bank has not objected to the said practice but rather encouraged it. As a matter of fact, as huge funds of the Bank were at stake, it was the primary duty of the Bank itself which should have taken the necessary steps to see that all the conditions are complied with prior to the release of the loans/instalments. This duty cannot be shifted to the Federation. The Board of Directors have therefore, failed to perform their statutory duty imposed by the Bye-laws.

23) In para 3(iv)(c) of the notice, it was pointed out that the directions were issued to the Bank on 20-5-1980 that no further loans should be sanctioned and the loans already sanctioned should not be released in respect of Fisheries Federation. The objections on this point raised by the Directors are not correct because the fact remains that from 21-5-1980 to 27-5-1980, loans worth Rs. 15.69 lakhs were released and further Rs. 18.30 lakhs were released from 29-8-1980 to 8-9-1980. If there was any doubt in the minds of the Board on the interpretation of the contents of the letter dated 20-5-1980, they could have sought the clarification from the Registrar. However, they intentionally gave the interpretation to the directions as suited to their subjects and thereby disobeyed the said directions.

24) As pointed out in para 3(v) of the notice, the Board of Directors have failed to observe the share-linking in respect of urban-loaning, which is a basic feature of the cooperative loaning. They have not enrolled the loanees as full-fledged members and thereby deprived the bank from 10% on the loans advanced as share capital contribution from such members. The objections raised on this point on the ground that the membership for the Bank had to be restricted to the societies only has no basis because the Bye-laws of the Bank specifically provide for individual membership. The nominal members are allowed only the facility of overdraft and that for loans against the pledge of gold or silver ornaments and unsecured loans cannot be advanced to such nominal members.

25) In regard to the point made out in para 3(v) (b) of the notice, the objection raised is baseless as no orders by the Registrar permitting the Bank's branch at Sanguem to undertake urban-loaning had been issued.

30) In regard to the point made out in para 3(vii) of the notice, and the contention made thereon, the correct position is that the loans are to be sanctioned only as per the approved scheme and the question of good objectives is irrelevant. Sanction of loan for construction of Bhandaras is not covered by the urban-loaning scheme and, therefore, is irregular and contrary to the scheme. The contention that the loans have been recovered does not help because in the first place such loans for such purposes could not have been sanctioned at all.

27) In regard to the point made out in para 3(v) (d) of the notice to the effect that by sanctioning a loan of Rs. 1.38 lakhs to an individual, the Bank has violated the rules framed

for urban loaning, it is noted that this violation has not been denied by the objectors. Their contention that the loans have been released for helping the weaker sections does not help in obliterating the irregularity because the law does not provide any releases prior to proper sanctions.

28) In regard to the point made out in para 3(v) (e) and (f) of the notice, and the reply thereto given by the objectors, it is stated that the urban-loaning scheme was discontinued with the Bank at least for a period of 3 months. There is, therefore, no option for the waiver of this condition because overdraft is a special facility which could be extended only to the valued and tried customers and with that point in view only, the conditions of operation of current account for a minimum period of 3 months had been prescribed. The objections that the overdraft to Mohan Dyes and Chemicals was sanctioned in the Executive Committee meeting held on 10-9-79 but due to oversight remained to be recorded in the proceedings is baseless and cannot be accepted.

29) In regard to the point made out in para 3(vi) of the notice to the effect that no overdraft facility can be granted unless the party has opened and operated a current account with the Bank at least for a period of 3 months. There is, therefore, no option for the waiver of this condition because overdraft is a special facility which could be extended only to the valued and tried customers and with that point in view only, the conditions of operation of current account for a minimum period of 3 months had been prescribed. The objections that the overdraft to Mohan Dyes and Chemicals was sanctioned in the Executive Committee meeting held on 10-9-79 but due to oversight remained to be recorded in the proceedings is baseless and cannot be accepted.

30) In regard to the point made out in para 3(vii) of the notice the principal objective of establishing a bank in the cooperative sector was to cater to the needs of agricultural sector. The share in the total loaning for the agricultural purposes comes to hardly 24.77% as indicated in the notice. The contention has been made by the objectors that the commercial banks are sanctioning loans at the rate of 4% and, therefore, more people are taking loans from these banks. This contention is not substantiated by any facts and figures. It is a very vague statement and does not provide enough justification for low percentage of agricultural-loaning.

31) As regards the point made out in para 3(viii) of the notice, it is seen that the overdues of the Bank have been increasing from year to year and that the Bank has not taken prompt action against the defaulters by referring the cases to arbitration and filing the awards for making them the rule of the Courts for their execution as provided under the law. As on 30-6-80, overdues were to the tune of Rs. 90.75 lakhs which is on a very high side. It has been admitted by the objectors that arbitration cases have been filed only in respect of Rs. 17.50 lakhs. In not filing the arbitration cases and not initiating action for the recovery of the remaining amount for a considerable long time, the Board has shown gross negligence in the performance of its duties.

32) As regards the point made out in para 3(ix) of the notice, the Board has violated the provisions of the Banking Regulation Act, 1949, by not maintaining liquid assets as required under the said Act.

33) As regards para 3(x) of the notice, I am not at all convinced by the objections raised by the objectors that the Bank has unlimited powers in granting extensions as and when it pleases. Extensions to the loans can be granted only at the request of the party and under exceptional circumstances. Further, I must say that the Board of Directors has shown utter disregard towards the financial management and it has granted extensions liberally to the Fisheries Federation for the repayment of the principal amounting to Rs. 23.50 lakhs. This irregularity was specifically brought to the notice of the Bank under my letter No. RCS/AR(HQ)/GSCE/70/Vol.VI/80 dated 28-7-1980. However, in utter disregard to the suggestions made by me, the board of directors in their wisdom persisted in granting extensions without proper justification thereby injuring the financial position of the Bank for times to come. No effective steps for the recovery of the amount had been taken by the Bank despite the specific provision empowering them to take action under the law. The contention that the Bank and not the Registrar of Coop. Societies is the proper authority to decide what constitutes exceptional circumstances, is not convincing. The Registrar of Coop. Societies has full right and authority to go into the question of each extension under his general powers of supervision and control and in exercise of that power, the Registrar has already brought to the notice of the Bank, the irregularities committed in respect of extensions granted in the repayment of the loan to the Cooperative Fisheries Federation.

34) In view of the aforesaid discussion and taking into consideration the objections raised by Shri Sirsat and others and also further taking into consideration the arguments urged by the learned Advocate on their behalf, I am of the opinion that the functioning of the Bank under the management of the present Board is not on proper lines and the Board has committed persistent defaults and have shown negligence in performance of their duties imposed by and under the Act, the Rules and the Bye-laws of the Bank thereby jeopardizing the interests of the depositors and share-holders and, as such, the continuance of the present Board will prove detrimental to the interest of the Bank. Therefore, I am of the opinion that the present Board of Directors of the Bank should be removed and an Administrator be appointed in its place to manage the affairs of the said Bank forthwith. Hence, I pass the following order: —

Order

In exercise of the powers conferred on me under Sub-section (1) of Section 78 of the Maharashtra Cooperative Societies Act, 1960, as extended to the Union Territory of Goa,

Daman and Diu, read with sub-rule (1) of Rule 61 of the Cooperative Societies Rules, 1962, I, Pukh Raj Bumb, Registrar of Cooperative Societies, Goa, Daman and Diu, Panaji, being of the opinion after giving the Board of Directors of the Goa State Cooperative Bank Ltd., Panaji, an opportunity of stating their objections, and after considering their objections, as discussed in detail above, that the said Board of Directors had been making persistent default and had been negligent in the performance of the duties imposed on it by the said Act and the said Rules or Bye-laws and had committed acts prejudicial to the interests of the said Bank and has been wilfully disobeying the directions issued by me from time to time and has not been performing its functions properly, hereby I move the said Board of Directors and appoint Shri D. V. Sathe, Assistant Registrar of Cooperative Societies as Administrator in its place to manage the affairs of the said Bank with immediate effect for a period of one year.

*Pukh Raj Bumb*, Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 9th March, 1981.